

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LAQUETTA STEWART,

CV 06-123-MA

Plaintiff,

OPINION AND ORDER

v.

MICHAEL J. ASTRUE,

Defendant.

TIM WILBORN
2020-C SW 8th Avenue, PMB # 294
West Linn, Oregon 97068

Attorney for Plaintiff

KARIN J. IMMERGUT
United States Attorney
NEIL J. EVANS
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204-2902

CAROL A. HOCH
Special Assistant United States Attorney
Social Security Administration
701 5th Avenue, Suite 2900 M/S 901
Seattle, WA 98104-7075

Attorneys for Defendant

MARSH, Judge:

Plaintiff, Laquetta Stewart (Stewart), brings this action for judicial review of a final decision of the Commissioner of Social Security denying her application for disability insurance

benefits (DIB) under Title II of the Social Security Act (the Act). See 42 U.S.C. §§ 401-33. This court has jurisdiction under 42 U.S.C. § 405(g).

Stewart applied for DIB August 6, 2003, alleging she became disabled January 1, 2002, due to a combination of the following: fibromyalgia, headaches, chronic fatigue, degenerative disc disease and depression. Stewart was born in April 1942, and worked as a hairdresser until the age of 59. She has a high school education, with additional training in cosmetology.

After her application was denied at the initial and reconsideration stages, Stewart requested a hearing, which was conducted before an Administrative Law Judge (ALJ) on February 8, 2005, and continued on March 14, 2005. On May 19, 2005, the ALJ issued a written decision, denying Stewart's request for benefits. The Appeals Council denied her request for review on December 20, 2005, making the ALJ's decision the final decision of the Commissioner of Social Security.

On appeal to this court Stewart alleges the ALJ erred by: (1) improperly rejecting lay witness testimony; (2) failing to provide legally sufficient reasons for rejecting Stewart's credibility; and (3) improperly rejecting the opinions of rheumatologist, Howard Gandler, M.D.. Stewart prays for remand for an immediate calculation of benefits.

The Commissioner admits error in the ALJ's decision, and asks this court to remand for further administrative proceedings to allow the ALJ to: (1) reevaluate plaintiff's alleged mental impairment, including obtaining a consultative mental examination; (2) to reevaluate Dr. Gandler's opinion; (3) to reevaluate lay witness testimony; and, thereafter, (4) to complete the five-step sequential evaluation. See Bowen v. Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. § 404.1520. The Commissioner maintains that further proceedings are necessary to resolve outstanding issues, such as the severity of Stewart's alleged mental impairment and related limitations, and the weight to be given the improperly rejected lay witness testimony.

Stewart opposes the Commissioner's motion for remand. She unpersuasively argues that crediting Dr. Gandler's opinion as true establishes that she is disabled, within the meaning of the Act. As outlined in the Commissioner's Memorandum in Support of Remand (Doc. # 22), even if Stewart's questionable subjective testimony did not compromise Dr. Gandler's opinion, precluding wholesale application of the "crediting as true doctrine," outstanding issues remain to be resolved before a disability determination can be made. See Harman v. Apfel, 211 F.3d 1172, 1178 (9th Cir. 2000) (citing Smolen v. Chater, 80 F.3d 1273, 1292 (9th Cir. 1996)).

Thus, for the reasons stated in the Commissioner's Memorandum in Support of Remand (Doc. # 22), I concur with the government, and find the matter must be remanded for further proceedings, as outlined above.

CONCLUSION

Based on the foregoing, the Commissioner's decision is REMANDED for further proceedings, consistent with this opinion.

IT IS SO ORDERED.

DATED this 23_ day of April, 2007.

/s/ Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge